

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7645
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9598

PATRICK J. DONOVAN
DIRECT DIAL: (202) 424-7857
FAX: (202) 424-7643
PJDONOVAN@SWIDLAW.COM

October 23, 2003

Via ECFS


Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Ex Parte
CC Docket No. 01-338

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on October 21, 2003, Jim Geiger, CEO, Julia O. Strow, Vice President - Regulatory and Industry Relations, Cbeyond Communications, LLC, and the undersigned met with Christopher Libertelli, Office of the Chairman. We presented the views set forth in the attached document which was provided at the meeting. We also provided a list of BellSouth's network disclosure notices from its website of replacement of copper with fiber over the past year.

Sincerely,



Patrick J. Donovan



CBEYOND
COMMUNICATIONS™

Jim Geiger – CEO

Richard Batelaan – COO

Julia Strow – VP Regulatory

October 21, 2003

BellSouth Petition for Reconsideration Should be Denied

- The TRO proceeding fully evaluated and *rejected* the relief BellSouth is seeking through its petitions
- The FCC in its order attempted to strike the a balance between maintaining competitive access to UNEs while providing Bell Companies the incentive for new network investment
- Expanding FTTH rules to FTTC and Multi-unit Premises will eviscerate CLECs serving the small business market and permit the Bell Companies to reclaim their monopoly of this vastly underserved market segment
- The relief requested and the relief granted to date fails to recognize that Bell Companies have aggressively deployed fiber without the relief granted in the TRO nor the relief being sought through the BellSouth Petition

Granting further relief will be at the sole expense of small business owners who will be denied access to competitive alternatives

BellSouth Petition for Reconsideration Should be Denied

BellSouth Position

- Extend FTTH relief to FTTC
- Extend FTTH relief to MDUs
- Broadband services and capabilities not subject to unbundling under Section 271
- No requirement to combine broadband UNEs offered under 271 with UNEs offered under 251
- No obligation to make network modifications to provide TDM capability
- Dark fiber obligations grandfathered as of effective date of the order

Impact to Local Competition

- Small business will be denied access to competitive alternatives
- Potentially includes areas such as strip malls where much of Cbeyond's target market resides thus denying small businesses with a competitive alternative
- Would allow ILEC monopoly control over broadband capable loops; could deny CLECs access to broadband loops/services even at non-TELRIC rates
- FCC TRO rules expressly permit "commingling"
- CLECs are impaired without access to DS1 and DS3 loops - the obligation to provide TDM capabilities to CLECs is clear in the TRO - if that obligation is lessened CLECs will not be able to serve small businesses with DS1 loops
- CLECs are impaired without access to dark fiber, no basis in the order or in the record for grandfathering

BILL SMITH, BELLSOUTH

By Vince Vittore

Telephony, Jun 2, 2003

If there is such a thing as divine redemption in the corporate world, BellSouth's Bill Smith is living it. Derided throughout the telecom industry's boom as the one big-league incumbent telco that would be left standing at the altar while others merged, BellSouth now finds itself in the enviable position of serving a still-growing local market base with the ability to provide long-distance service everywhere.

More important to Smith, chief product development and technology officer for BellSouth, is the company's network. Once considered to be shackled by its extensive use of digital loop carriers (DLCs), it has become one of the more advanced and fiber-rich networks in the U.S. because of the need to push fiber to those remote terminals. What's more, BellSouth is sitting on the a trove of broadband wireless spectrum.

The BellSouth that's emerging from the telecom meltdown isn't radically different from the BellSouth of 1999 that was struggling to extend DSL services beyond those remote terminals. It's just a matter of time and perception — and, perhaps, the development of DSL equipment that could be integrated with DLCs.

“I used to tell analysts that it's a blessing and a curse,” Smith said. “We have 45,000 remote terminals. It's going to take us a little longer to get there, but when we do we have a much shorter loop. We can reach a lot of existing DSL customers with 5 Mb/s, and almost all of them with 3 Mb/s.”

In fact, BellSouth has become adept at assembling a variety of big bandwidth options for the last mile. By adopting a strategy of pushing fiber further into the network to reach those remote terminals earlier than most large carriers, the carrier has become a potential test case for the network of the future. The company currently has 1 million homes passed with fiber in the loop and an additional 14 million with fiber fed to a nearby distribution point. The company is the leading proponent of passive optical networks and will keep deploying fiber close to users — assuming the FCC's triennial review order truly will prevent competitors from piggybacking on those facilities.

“I'm strong proponent of fiber to the home and fiber to the curb,” Smith said. “Once you have that bandwidth in place you're set. I'm nervous about what the FCC will say. You have to be careful about assuming too much based on the summary comments.”

BellSouth also has the largest collection of broadband wireless licenses of any telco in the country, with swaths of bandwidth in both the MMDS and WCS bands.

What the carrier will send over all those fat pipes is still in question. While it could simply gear up for more Internet access, the company also is exploring video services. BellSouth has been aggressive in the past, launching both wireless and wireline video trials.

“Two years ago, I would have said that DSL is never going to meet the needs of entertainment

services,” Smith said. “We’re going to see a point where you could easily use DSL for entertainment.”

In the core network, BellSouth is among the most aggressive in rolling out an MPLS-based backbone. But don’t expect BellSouth to jump on the anti-ATM bandwagon.

“Moving to an MPLS core is the right thing to do, but we’re not going to go rip out ATM elements just because we like MPLS better,” Smith said. “ATM didn’t kill frame relay. I don’t think MPLS will kill ATM.”

Nor will softswitch technology kill off the traditional Class 5 switch in the short term, he added. BellSouth is testing a variety of IP telephony plays, including terminating traffic into South Florida on an IP gateway and reselling Cisco’s AVVID platform for premises-based deployment. In addition, the company is now looking at ways to move to full softswitch implementations.

Like much of its technology transitions, this one will be calculated — and slower than most analysts want. Smith compared the move to softswitches with the transition to digital switching 20 years ago. At the time, digital switches had fewer features than analog switches, but most telcos realized that digital was the wave of the future and started a slow transition.

“I tell anyone who’s been around since then to get out the play book because we’re going to be running the same plays.”

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